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STANDARD NO 2 ON FINANCIAL INFORMATION

COORDINATION OF ENFORCEMENT ACTIVITIES

APRIL 2004



Foreword

In April 2003, CESR published the first standard on Financial Information: Enforcement of Standards on Financial Information in Europe. This standard was published along with a feedback statement summarizing the responses received during the consultation process that preceded the adoption of the final standard.

This standard no.1 identified the need for setting up an appropriate mechanism whereby CESR members and non-CESR members may discuss enforcement issues in order to achieve a high level of coordination and convergence in this field. The feedback statement published along with the standard no. 1 indicated that CESR would take initiatives in this area in the near future.

The Standard no. 2 on Financial Information – Coordination of Enforcement exposes CESR's proposals for achieving the necessary coordination and convergence of enforcement activities carried out by EU National Enforcers. This Standard is a principle-based standard establishing a framework that will be completed by implementation measures necessary for the realisation of the identified principles.

The major proposals are the following:

- a) All EU National Enforcers should take into account decisions taken by other Enforcers consistent with timing and feasibility constraints. Where possible pre-consultation with other EU National Enforcers should take place.
- b) In order to permit application of the previous principle, decisions taken by EU National Enforcers should be made available to the other EU National Enforcers. The creation of a database of enforcement decisions taken by EU National Enforcers is proposed as a practical way for achieving it. In this regard, a confidentiality regime will have to be followed.
- c) In order to obtain a higher level of harmonization, discussion of enforcement decisions and experiences will be made through European Enforcers Coordination Sessions (EECS) where all EU National Enforcers should participate, being CESR-Member or not.

The Standard No 2 has been prepared by CESR's standing committee (CESR-Fin) in the area of financial reporting and more specifically by the Sub-Committee on Enforcement (SCE) of CESR-Fin. CESR-Fin was chaired by M. Henrik Bjerre-Nielsen, Director General of the Danish Financial Supervisory Authority until November 2003 and is now chaired by M. John Tiner, Chief Executive Officer of the Financial Services Authority in the UK. The Sub-Committee on Enforcement (SCE) is chaired by M. Angelo Apponi, Chief Accountant at the Italian Commissione Nazionale per le Società e la Borsa (CONSOB).

The draft Standard No 2 was originally released on 7th October 2003 for public consultation. The period for comments expired on 7th January 2004, after a public hearing was held on the premises of CESR in Paris on the 12th November 2003.

During the consultation period, 22 letters were received from various organizations. All comment letters received have been published on the CESR website.

A feedback statement is being published along with the present final text of the Standard No 2, explaining CESR's position on the major comments expressed by respondents to the public consultation.



A. Context and scope of the standard

The standard n.1 on Financial Information (Enforcement of Standards on Financial Information in Europe), which was approved by CESR on March 21, 2003, identified the need for setting up a mechanism where CESR members and non-CESR enforcers may meet to discuss decisions and experiences in the field of enforcement of standards on financial information.

This mechanism is aimed at achieving a high level of coordination and convergence in the enforcement decisions.

The Standard n. 2 is aimed at highlighting the major issues linked to coordination in enforcement field and suggesting possible measures consistent with the Standard n.1.

As stated in the explanatory notes to principle 20 of the Standard n.1, issuing general interpretation of existing standards is part of the standard setting process conducted by the relevant bodies, such as International Financial Reporting Interpretations Committee (IFRIC). This standard is concerned with coordination of the enforcement decisions. Therefore, it does not deal with general interpretation and/or application guidance of financial reporting standards.

Coordination under this Standard is meant to address cases where specific financial information treatments come to enforcers' attention and decisions on their compliance with the reporting framework have to be taken. This may relate both to ex-ante and ex-post enforcement decisions (including pre-clearances).

B. Co-ordination of enforcement activities

Standard n.1 Principle 3 and 4 provided that enforcement should be carried out at national level by enforcers who are either competent independent administrative authorities or other bodies by way of delegation.

According to the definition of enforcement provided by Principle n. 2 of the Standard n.1, enforcement activity implies taking appropriate measures where infringement of the reporting framework are discovered.

The decision to take an appropriate measure is normally taken after the issuers disclose financial information, even if according to Principle 11 of the Standard n.1 pre-clearances are not precluded.

In order to avoid the creation of national approaches to IFRS, Principle 20 of the Standard n.1 recognises the need to promote harmonization. This implies that enforcers should try to take their decisions in the most consistent way: the aim being that similar decisions are taken where similar circumstances take place all over Europe.



Principle 1 Ex ante and ex post enforcement decisions taken by competent independent administrative authorities or by bodies delegated by these authorities (“EU National Enforcers”) should take into account existing precedents consistent with the timing and feasibility constraints which characterize the decision. Where practicable, discussions with other EU National Enforcers should take place before significant decisions are taken.

In order to meet with the requirement conveyed by the recital 16 of the EU Regulation on IFRS, Principle 1 requires co-ordination both for ex-ante and ex-post enforcement decisions.

For the purpose of this standard EU National Enforcers include competent independent administrative authorities and delegated bodies as described by principles 3 to 8 of CESR standard n.1 on Financial Information

Some enforcers offer issuers the possibility to obtain pre-clearance, such pre-clearance decisions will constitute ex-ante enforcement decisions under Principle 1.

The best option for coordination implies that before taking decisions the relevant enforcer discusses significant issues with the other EU National Enforcers.

However, as already stated in the grey lettering under Principle 20 of Standard n. 1, in some cases full consultation may be hampered by timing or feasibility constraints. Therefore, a coordination mechanism should be designed to be particularly flexible in order to allow multilateral and/or bilateral consultation as well as electronic research of precedents.

Decisions already taken in similar circumstances by the same enforcer or by other enforcers may constitute precedents which may have different legal status according to the various EU jurisdictions. In most of the cases these decisions will at least be considered a source of information as well as a useful tool for the enforcers’ decision making process.

The above will foster convergence of enforcement decisions.

As indicated in the Standard No 1, the enforcement activities will continue to be conducted at the national level, with appropriate national enforcement structures. It is not envisaged, through the present standard to create a “second-chamber” mechanism empowered to revise national decisions. The coordination mechanism is aimed at improving convergence on future decisions and is intended to work on an efficient and flexible basis and will mainly gain authority from the practical cooperation of its members and from the quality of its output.

Principle 2 Within a reasonable time after decisions are taken by an EU National Enforcer, details of these decisions should be made available to the other EU National Enforcers in accordance with the policies developed by CESR.

Principle 3 The EU National Enforcers should follow a confidentiality regime consistent with that applicable to CESR members.

In order to cope with feasibility constraints to full consultation and foster harmonization in enforcement practices, CESR considers that the most practical way to disseminate enforcement decisions is via a database. Such a database will provide enforcers with information on decisions taken in other EU countries together with the rationale which lies behind such decisions.

This data base is aimed at informing all EU National Enforcers on cases considered by enforcement bodies both in their ex-ante and ex-post enforcement activity. To this end, enforcement decisions include both situations where the enforcers concluded that no infringement may be identified and cases where the enforcers discovered an infringement of the reporting framework. Pre-clearances are included among the enforcement cases in so far as they bear the enforcers’ point of view on the compliance of a specific financial information treatment with the relevant reporting framework.



In order to set up and operate the database the EU National Enforcers should commit themselves to follow the input policies to be developed by CESR, which are aimed at addressing the technical details of the data base, the selection criteria to be followed for identifying enforcement decisions to be described in the data base and the confidentiality constraints to disclosure of enforcement decisions.

The CESR database should be accessible to all EU National Enforcers committed to applying CESR enforcement standards. However, disclosure of enforcement decisions to other parties (such as issuers, their auditors, non EU regulators) may produce further benefits for harmonization. To this end CESR will consider appropriate measures additional to those required by principle 21 of the Standard n.1, aimed at public disclosure of selected information. Any public disclosure of information will need to be made in a way that gives a fair and complete view of cases and decisions described and will duly consider confidentiality and privacy implications.

Dissemination of information among EU National Enforcers may imply exchange of confidential information. Therefore, EU National Enforcers should be subject to a confidentiality regime that is comparable and compatible with the confidentiality regimes securities regulators are subject to under the EU legislation and the CESR Memorandum of Understanding on exchange of information.

As indicated above, is not envisaged, through the present standard to create a “second-chamber” mechanism empowered to revise national decisions. However, it may be decided to publish some decisions instead of others and to withdraw previously published decisions where necessary (e.g. when IFRIC has published an interpretation contradicting all or part of an existing decision)

Principle 4 In order to achieve a high level of harmonization, European Enforcers Coordination Sessions (EECS) of the SCE will be organised and will involve all EU National Enforcers of standards on financial information, being CESR members or not. Such sessions will be aimed at discussing decisions taken at national level, as well as experiences in the application of standards on enforcement.

Considering that in some EU countries enforcement is (and will be) conducted by non-CESR members, it is necessary for reaching an efficient and meaningful coordination of enforcement to call a wider forum where all EU National Enforcers who are committed to applying CESR enforcement standards (being CESR members or not), may meet. The EECS are aimed at allowing enforcers (belonging to CESR or not) to exchange their views on enforcement cases and discuss decisions taken at national level. The EECS may also help to highlight enforcement issues to be dealt with in the standard setting process.

The EECS should consist of representatives from CESR-members and non-CESR EU National Enforcers.

In order to allow to the enforcers an in-depth knowledge of the more important cases and to encourage convergence of decisions, selected enforcement decisions will be discussed by the EECS.

Where the debate among enforcers identifies material financial information issues which are not covered by the reporting standards or may be affected by conflicting interpretations of the relevant standard, CESR will open a dialogue with standard setting or interpretive bodies such as IASB or IFRIC.

CESR members will be responsible for identifying and inviting the non-CESR EU National Enforcers.

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